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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,746	03/07/2002	Robert D. Feldman	FELDMAN 11-1-1-2-8	2870
46363	7590	10/29/2010	EXAMINER	
WALL & TONG, LLP/ ALCATEL-LUCENT USA INC. 25 James Way Eatontown, NJ 07724			WANG, QUAN ZHEN	
			ART UNIT	PAPER NUMBER
			2629	
			MAIL DATE	DELIVERY MODE
			10/29/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT D. FELDMAN, JANET M. GREENBERG,
MILE RADOVANOVIC, S. R. THANGAVELU
and WILLIAM A. THOMPSON

Appeal 2009-004681
Application 10/092,746
Technology Center 2600

Before KENNETH W. HAIRSTON, JOSEPH F. RUGGIERO and
BRADLEY W. BAUMEISTER, *Administrative Patent Judges*.
HAIRSTON, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

DECISION ON REQUEST FOR REHEARING

In a Decision dated August 20, 2009, the Board affirmed the obviousness rejection of claims 1, 3 to 10, 12 to 14, 16, and 18 to 20 based upon the teachings of Maddocks and Rowley because of a finding that the alternative embodiment in Maddocks described a single optical fiber path that would teach or suggest the claimed supervisory signal “counter-propagating” in the single optical fiber path (Decision, 6, 10). Appellants argue (Request, 2-5) that the single optical fiber alternative embodiment, like the two optical fiber preferred embodiment in Maddocks, only teaches or suggests a supervisory signal that co-propagates with the data signal through the single optical fiber. Appellants specifically argue (Request, 3) that an identifier signal (i.e., a supervisory signal) that is transmitted by the transmitter along with the data signal through the single optical fiber in Maddocks has to co-propagate with the data signal.

Inasmuch as the supervisory signal in Maddocks carries the noted identifier signal that identifies the transmitter (col. 1, ll. 56-62; col. 3, ll. 43-55) along with path and routing information, and frame alignment signals for the data signal transmitted by the transmitter (col. 2, ll. 37-46), we agree with Appellants’ argument that both embodiments in Maddocks are limited to a co-propagating supervisory signal, and do not teach or suggest a “counter-propagating” supervisory signal as set forth in the claims on appeal.

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In summary, Appellants' Request for Rehearing has been granted to the extent that our decision has been reconsidered and modified to reflect our agreement with Appellants that the obviousness rejection of claims 1, 3 to 10, 12 to 14, 16, and 18 to 20 should be reversed.

REHEARING
GRANTED

KIS

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